A

AMARAVATHY V NADESON & ANOR

v.

SIVAPRAGASAM NAGAMANY

B

COURT OF APPEAL, PUTRAJAYA
DENIS ONG JCA
ABDUL AZIZ MOHAMAD JCA
JAMES FOONG JCA
[CIVIL APPEAL NO: A-02-612-2001]
C 4 MAY 2007

SUCCESSION: *Administration - Transfer of property - Specific performance - Oral agreement for transfer of property - Whether administratrix had capacity to transfer property even though agreement*
D *made before her appointment as administratrix of estate - Whether permission of court must be obtained for transfer of property - Probate and Adminstration Act 1959, s. 60(4), (6)*

CONTRACT: *Specific performance - Transfer of property - Oral*
E *agreement for transfer of property - Whether administratrix had capacity to transfer property even though agreement made before her appointment as administratrix of estate - Whether permission of court must be obtained for transfer of property - Probate and Adminstration Act 1959, s. 60(4), (6)*

F ***LAND LAW:*** *Transfer - Specific performance - Oral agreement for transfer of property - Whether administratrix had capacity to transfer property even though agreement made before her appointment as administratrix of estate - Whether permission of court must be obtained for transfer of property - Probate and Adminstration Act 1959, s. 60(4),*
G *(6)*

This appeal arose from a dispute between the estate of one K. Nagamany, deceased ('Mrs Nagamany') and the estate of one Ayaduray Sugirtha Lingam, deceased ('Mr Lingam'), who was Mrs
H Nagamany's twin brother, over a parcel of land with a house on it ('property'). Mrs Nagamany's estate was represented by its executor, her son, as the plaintiff in the High Court and the respondent in the appeal while Mr Lingam's estate was represented by its two administratrices, Mr Lingam's widow ('Mrs
I Lingam') and their daughter, as defendants in the High Court and appellants in the appeal. The property's registered owner was Mrs Nagamany's elder brother ('Mr Moorthy') and its beneficial owner

was Mr Lingam. Although Mr Nagamany purchased the property from Mr Moorthy, it was transferred into Mr Lingam's name on the understanding that it would later be transferred to Mrs Nagamany. However, both Mr Nagamany and Mr Lingam died without the property being transferred to Mrs Nagamany.

On 17 March 1973, Mrs Lingam "orally agreed" to transfer the property to Mrs Nagamany as soon as letters of administration to Mr Lingam's estate had been extracted and the necessary orders obtained. Later, however, Mrs Lingam withdrew her undertaking to transfer the property and instead gave Mrs Nagamany an option to purchase it for RM40,000. In October 1974, Mrs Lingam's solicitors sent to Mrs Nagamany a draft agreement for the transfer of the property for her perusal and approval but the agreement was never executed owing to Mrs Lingam's change of mind. Mrs Lingam then imposed on Mrs Nagamany a rental of RM100 per month for occupying the property, which Mrs Nagamany paid out of fear of being evicted. On 28 November 1979, Mrs Lingam gave Mrs Nagamany three months' notice to quit, and since then Mrs Nagamany had refused to pay the rental; Mrs Nagamany died in 1986. The respondent sought the specific performance of the said oral agreement and a refund of all moneys paid as rental. The learned trial judge found for the respondent, resulting in the present appeal by the appellants. The appellants were granted leave to raise the following two points: (i) at the date of the oral agreement of 17 March 1973 and of the draft agreement of October 1974, Mrs Lingam and her daughter had no capacity to transfer the property, and no property to transfer, because they had not yet been appointed administratrices of the estate of Mr Lingam. They were granted letters of administration only on 5 November 1975. In support of this argument, the appellants relied on the Federal Court case of *Chor Phaik Har v. Farlim Properties Sdn Bhd*; and (ii) the order for specific performance should have contained a requirement that the permission of the court be obtained under s. 60(4) of the Probate and Adminstration Act 1959 ('Act') for the transfer of the property.

A **Held (dismissing the appeal)**

Per Abdul Aziz Mohamad JCA delivering the judgment of the court:

B **(1)** The case of *Chor Phaik Har (supra)* was clearly inapplicable to the present case, because the present case was not a case where a beneficiary of an intestate estate was attempting to dispose of his expected share in the estate. Mrs Lingam, when she verbally agreed and undertook on 17 March 1973 to C transfer the property to Mrs Nagamany as soon as she obtained letters of administration to the estate of her husband, was not agreeing to transfer it as a property that she expected to obtain as a beneficiary of her husband's estate, but as a property that her husband had already sold to Mr Nagamany D and been fully paid for. It was to honour the sale and the understanding that the property would be transferred to Mrs Nagamany. Mrs Lingam made the promise on behalf of Mr Lingam's estate which already owed the property to **Mrs Lingam**, and not on behalf of herself as a beneficiary of the E property. The property having been sold by Mr Lingam, it was no longer a part of Mr Lingam's estate and his beneficiaries could have no share in it. Mrs Lingam's promise was a promise to discharge an existing obligation of Mr Lingam's estate when she had the capacity to do so. Now that she was F clothed with that capacity by being appointed administratrix, she, along with her daughter, was bound to carry out the promise. (para 12)

(2) Section 60(4) of the Act does not apply to a case, as this case was, where the transfer would be carried out on the G order of the court itself. It would have been absurd for the court to order the appellants to effect a transfer of the property and at the same time to order them not to do so before obtaining the permission of the court. In any case, the point was not of a nature that would strike at the validity of H the finding of a concluded or binding contract or of the validity of the orders for specific performance made in consequence of the finding, because, according to s. 60(6) of the Act, the consequence of contravention of s. 60(4) of the Act is on the transfer, and that, too, only to render it I voidable at the instance of any other person interested in the property. (para 13)

Bahasa Malaysia *translation of headnotes*

Rayuan ini berbangkit dari pertikaian di antara pusaka K. Nagamany, si mati ('Mrs Nagamany') dan pusaka Ayaduray Sugirtha Lingam, si mati ('Mr Lingam'), yang merupakan kembar Mrs Nagamany, terhadap sebidang tanah dengan sebuah rumah di atasnya ('hartanah'). Pusaka Mrs Nagamany di wakili oleh wasinya, iaitu anak lelaki beliau, selaku plaintif di Mahkamah Tinggi dan responden di dalam rayuan, sementara pusaka Mr Lingam diwakili oleh dua pentadbirnya, iaitu balu Mr Lingam ('Mrs Lingam') dan anak perempuan mereka, selaku defendan di Mahkamah Tinggi dan perayu di dalam rayuan. Pemilik berdaftar hartanah adalah abang kepada Mrs Nagamany ('Mr Moorthy') dan pemilik benefisialnya adalah Mr Lingam. Walaupun Mr Nagamany membeli hartanah dari Mr Moorthy, ia dipindahmilik kepada Mr Lingam atas persefahaman bahawa ia kemudian akan dipindahmilik kepada Mrs Nagamany. Bagaimanapun, kedua-dua Mr Nagamany dan Mr Lingam meninggal dunia tanpa hartanah dipindahmilik kepada Mrs Nagamany.

Pada 17 Mac 1973, Mrs Lingam "bersetuju secara lisan" untuk memindahmilik hartanah kepada Mrs Nagamany sebaik sahaja surat kuasa mentadbir pusaka Mr Lingam dan perintah-perintah berkaitan diperolehi. Bagaimanapun, Mrs Lingam kemudian menarik balik janjinya dan sebaliknya memberi opsyen kepada Mrs Nagamany untuk membeli hartanah dengan harga RM40,000. Pada bulan Oktober 1974, peguamcara Mrs Lingam menghantar satu deraf perjanjian pindahmilik hartanah kepada Mrs Nagamany untuk penelitian dan persetujuan beliau, tetapi perjanjian tidak jadi dimeterai kerana Mrs Lingam telah mengubah fikirannya. Mrs Lingam kemudian mengenakan sewa sebanyak RM100 sebulan ke atas Mrs Nagamany kerana menduduki hartanah, di mana ianya dibayar oleh Mrs Nagamany kerana takut diusir dari hartanah. Pada 28 November 1979, Mrs Lingam memberi notis tiga bulan kepada Mrs Nagamany untuk keluar, dan bermula dari tarikh itu Mrs Nagamany berhenti membayar sewa; Mrs Nagamany meninggal dunia pada tahun 1986. Responden memohon perintah pelaksanaan spesifik terhadap perjanjian lisan di atas dan pemulangan semua wang sewa yang dibayar. Yang arif hakim bicara memutuskan untuk responden sekaligus mencetuskan rayuan di sini. Perayu dibenarkan untuk membangkitkan dua persoalan berikut: (i) pada masa tarikh perjanjian lisan pada 17 Mac 1973 dan deraf perjanjian pada bulan Oktober 1974, Mrs Lingam dan anak perempuannya tidak mempunyai kapasiti untuk memindahmilik

A hartanah, dan tidak ada hartanah untuk dipindahmilik, kerana mereka belum lagi dilantik pentadbir-pentadbir pusaka Mr Lingam. Mereka hanya diberikan surat kuasa mentadbir pada 5 November 1975. Bagi menyokong hujahnya, perayu bergantung kepada kes Mahkamah Persekutuan *Chor Phaik Har v. Farlim Properties Sdn* B *Bhd*; dan (ii) perintah pelaksanaan spesifik sepatutnya mengandungi keperluan bahawa, bagi maksud pindahmilik hartanah, kebenaran mahkamah hendaklah diperolehi di bawah s. 60(4) Akta Probet dan Pentadbiran 1959 ('Akta').

C **Diputuskan (menolak rayuan)**

Oleh Abdul Aziz Mohamad HMR menyampaikan penghakiman mahkamah:

(1) Kes *Chor Phaik Har (supra)* jelas tidak terpakai kepada kes D semasa disebabkan kes semasa bukanlah suatu kes di mana seorang waris kepada pusaka tak berwasiat ingin melupuskan bahagiannya di dalam pusaka. Mrs Lingam, bila bersetuju secara lisan dan berjanji pada 17 Mac 1973 untuk memindahmilik hartanah kepada Mrs Nagamany sebaik E memperoleh surat kuasa mentadbir pusaka suaminya, bukanlah bersetuju untuk memindahmilik suatu hartanah yang terbit dari pusaka suaminya yang beliau berhak sebagai seorang waris, sebaliknya suatu hartanah yang telahpun dijual oleh suaminya kepada Mr Nagamany dan dibayar sepenuhnya oleh Mr F Nagamany. Pindahmilik hartanah kepada Mrs Nagamany adalah bagi menghormati penjualan dan persefahaman ini. Janji yang dibuat Mrs Lingam adalah bagi pihak pusaka Mr Lingam yang terhutang hartanah kepada **Mrs Lingam**, dan bukan bagi pihak dirinya selaku benefisiari kepada hartanah. Dengan G hartanah telahpun dijual oleh Mr Lingam, ia tidak lagi menjadi sebahagian pusaka Mr Lingam berakibat waris-waris beliau tidak berhak kepada apa-apa bahagiannya. Janji Mrs Lingam adalah janji untuk menunaikan obligasi semasa pusaka Mr Lingam apabila beliau mempunyai kapasiti untuk berbuat H demikian. Oleh kerana beliau kini telah dilantik sebagai pentadbir, maka beliau, serta anak perempuannya, bertanggungan untuk menunaikan janji itu.

(2) Seksyen 60(4) Akta tidak terpakai kepada kes, sepertimana kes I di sini, di mana pindahmilik dilakukan atas perintah mahkamah sendiri. Adalah dangkal bagi mahkamah untuk memerintahkan perayu melaksanakan pindahmilik hartanah dan pada masa yang

sama mengarahkan mereka supaya jangan berbuat demikian sebelum mendapat kebenaran mahkamah. Walau apapun, persoalan ini tidak menjejaskan kesahan dapatan bahawa sudah wujud suatu kontrak mengikat atau kesahan perintah-perintah pelaksanaan spesifik yang dibuat ekoran dapatan tersebut. Ini kerana, mengikut s. 60(6) Akta, akibat dari pelanggaran s. 60(4) Akta adalah terhadap pindahmilik, dan itupun, hanya untuk menjadikannya boleh batal oleh mana-mana orang lain yang mempunyai kepentingan dalam hartanah.

Case(s) referred to:
Chor Phaik Har v. Farlim Properties Sdn Bhd [1997] 4 CLJ 393 FC ***(dist)***

Legislation referred to:
Probate and Administration Act 1959, s. 60(4), (6)

For the appellants - Datuk N Chandran (Sri dev Nair with him); M/s Sri Dev & Naila
For the respondent - RD Rajasingam (B Muralidharan with him); M/s Lewis & Co

[Appeal from High Court, Ipoh; Civil Suit No: 243-1980]

Reported by Suresh Nathan

JUDGMENT

Abdul Aziz Mohamad JCA:

[1] This appeal, which we dismissed, arose from a dispute between the estate of K. Nagamany nee Sugirtha Letchumy d/o Ayadurai, deceased ("Mrs Nagamany") and the estate of Ayaduray Sugirtha Lingam, deceased ("Mr Lingam"), who was Mrs Nagamany's twin brother. Mrs Nagamany's estate was represented by its executor, Mrs Nagamany's son, as the plaintiff in the High Court and the respondent in the appeal. Mr Lingam's estate was represented by its two administratrices, Mr Lingam's widow and their daughter, as defendants in the High Court and appellants in the appeal. Mr Lingam's widow, Amaravathy d/o Nadeson, will now be referred to as "Mrs Lingam". The dispute was over a parcel of land with a house on it known as No. 10, Woods Avenue, Canning Garden, Ipoh ("the property"). Although originally its registered owner was Mrs Nagamany's elder brother Ganesa Moorthy ("Mr Moorthy"), its beneficial owner was Mr Lingam, Mrs Nagamany's twin brother.

[2] In his amended statement of claim, the plaintiff (representing the estate of Mrs. Nagamany) averred, *inter alia*, as follows. In 1960 Mr Nagamany, Mrs Nagamany's husband, purchased the property from Mr Moorthy, the legal owner, and Mr Lingam, the beneficial owner, for RM18,500, which sum, on the instructions and with the full knowledge of Mr Lingam, Mr Nagamany tendered in full to Mr Moorthy. The property, however, continued to be in Mr Moorthy's name although Mr Moorthy and Mr Lingam agreed and undertook to transfer the property to Mrs Nagamany. After Mr Moorthy died on 17 July 1966, Mr Lingam had the property transferred into his name on the understanding that it would later be transferred to Mrs Nagamany. Mr Nagamany died on 2 February 1973 and Mr Lingam on 1 March 1973, but the property had not been transferred to Mrs Nagamany.

[3] The amended statement of claim went on to aver, *inter alia*, as follows. On 17 March 1973, about two weeks after Mr Lingam died, when Mrs Nagamany went and saw Mrs Lingam at her house in Taiping, the latter "orally agreed" to transfer the property to Mrs Nagamany as soon as letters of administration to Mr Lingam's estate had been extracted and the necessary orders obtained. This was averred in para 8. Paragraphs 9 and 10 contained averments that Mrs Lingam prevailed upon Mrs Nagamany to surrender to Mrs Lingam Mr Lingam's I.O.U. chit for a sum of RM10,000 owed by Mr Lingam to Mr Nagamany and to transfer to Mrs Lingam Mrs Nagamany's Lot 34406. In para 10 it was averred that Mrs Lingam again "verbally agreed and undertook" to transfer the property to Mrs Nagamany. In para 11 it was averred that on 16 February 1974, when they were in the office of Mrs Lingam's solicitors to effect the transfer of Mrs Nagamany's Lot 34406 to Mrs Lingam, the latter intimated to Mrs Nagamany that she would honour her "verbal agreement and undertaking" in respect of the property. In para 12 it was averred that to show her sincerity in wanting to complete her part of the agreement Mrs Lingam instructed her solicitors to prepare an agreement to transfer the property to Mrs Nagamany for love and affection and that Mrs Nagamany's transfer of her Lot 34406 was "in reliance on the aforesaid representation", which might be intended to refer to Mrs Lingam's intimation to Mrs Nagamany that was averred in para 11.

[4] The amended statement of claim continued to aver that although Mrs Lingam continued to make known to Mrs Nagamany that she was ready and willing to transfer the property to Mrs Nagamany, by letter dated 13 September 1974 Mrs Lingam withdrew her undertaking to transfer the property and instead gave Mrs Nagamany an option to purchase it for RM40,000. In October 1974 Mrs Lingam's solicitors sent to Mrs Nagamany a draft agreement for the transfer of the property to her for her perusal and approval but the agreement was never executed owing to Mrs Lingam's change of mind. Mrs Lingam imposed on Mrs Nagamany a rental of RM100 per month for occupying the property, which Mrs Nagamany paid out of fear of being evicted. On 28 November 1979 Mrs Lingam gave Mrs Nagamany three months' notice to quit, and since then Mrs Nagamany had refused to pay the rental.

[5] The plaintiff sought various reliefs, the foremost being – prayer (a) – specific performance of "the said agreement". That phrase, which had not been used previously in the amended statement of claim, could only refer to the oral agreement averred in para 8 by which, on 17 March 1973, Mrs Lingam orally agreed to transfer the property into Mrs Nagamany's name as soon as the letters of administration had been extracted and the necessary orders obtained. Of the other reliefs sought was a refund of all moneys paid as rental.

[6] Mrs Lingam and daughter were granted letters of administration to the estate of Mr Lingam on 5 November 1975. Mrs Nagamany, who originally in July 1980 brought the action, died on 20 June 1986.

[7] The learned trial judge, after considering the evidence adduced in the trial on both sides, ordered specific performance of the oral agreement of 17 March 1973 between Mrs Lingam and Mrs Nagamany and also ordered a refund of all rentals that Mrs Nagamany had paid for occupying the property. He found that the oral agreement of 17 March 1973 was a concluded contract. He was fortified in that finding by the fact that subsequently a draft agreement was prepared by Mrs Lingam's solicitors, which he said was the most salient aspect of the case. He concluded by finding on the strength of the draft agreement "of 16 October 1974" and on the totality of the evidence that the plaintiff had established on a balance of probabilities a case for specific performance.

[8] For the appeal before us, which was that of Mrs Lingam and her daughter as administratrices of the estate of Mr Lingam, a written submission had been prepared by their counsel where the only point argued was that the learned trial judge arrived at his decision without sufficient judicial evaluation and appreciation of the entire evidence. This argument was not pursued in counsel's oral submission because, by consent, leave was granted for the appellants to raise two points not argued in the High Court, and those were the points that were pursued in oral submission before us. The more important of the two points was that at the date of the oral agreement of 17 March 1973 and of the draft agreement of October 1974 Mrs Lingam and her daughter, who were named in the draft agreement as the first party, had no capacity to transfer the property, and no property to transfer, because they had not yet been appointed administratrices of the estate of Mr Lingam. They were granted letters of administration only on 5 November 1975.

[9] In connection with this point as to capacity, a criticism was made of the learned trial judge's referring to the draft agreement as one "of 16 October 1974", that it was not clear where he got the date. Nothing, however, turned on this. If it was a mistake it was immaterial. The fact was that the draft agreement gave October 1974 as the date, the actual day being left blank.

[10] It is important to bear in mind that the agreement that the plaintiff sought, and the judge granted, specific performance of was the oral agreement of 17 March 1973, not the draft agreement of October 1974. The learned judge merely took the evidence of the draft agreement as proof of the existence of a concluded contract by the oral agreement of 17 March 1973. Therefore the point as to capacity needed only to be considered in relation to the oral agreement of 17 March 1973.

[11] In support of the argument as to capacity, the appellants' counsel relied on *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1997] 4 CLJ 393. In that case the question that arose was whether the beneficiaries of the estate of a person who had died intestate could in law, before the estate of the deceased was administered and distributed, have any interest or property in the estate. The Federal Court said at p 402 e:

> … it is our conclusion that in law a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate.

Therefore (p. 404 b-c) the beneficiaries had no title to lands belonging to the estate and could not enter, as they did, into agreements to sell the lands. What the decision amounts to is that a beneficiary of the estate of a person who died intestate has no title to any property forming, or forming part of, the estate until it actually becomes his after and as a result of the administration and distribution of the estate, and cannot dispose of the property. He cannot dispose of what is not yet his.

[12] That was the only case relied on by the appellants to argue in the appeal against the finding of the learned trial judge that the oral agreement of 17 March 1973 was a binding agreement. That case clearly is inapplicable to the present case, because the present case is not a case where a beneficiary of an intestate estate was attempting to dispose of his expected share in the estate. Mrs Lingam, when she verbally agreed and undertook on 17 March 1973 to transfer the property to Mrs Nagamany as soon as she obtained letters of administration to the estate of her husband, was not agreeing to transfer it as a property that she expected to obtain as a beneficiary of her husband's estate, but as a property that her husband had already sold to Mr Nagamany and been fully paid for. It was to honour the sale and the understanding that the property would be transferred to Mrs Nagamany. Mrs Lingam made the promise on behalf of Mr Lingam's estate which already owed the property to Mrs Lingam, and not on behalf of herself as a beneficiary of the property. The property having been sold by Mr Lingam, it was no longer a part of Mr Lingam's estate and his beneficiaries could have no share in it. Mrs Lingam's promise was a promise to discharge an existing obligation of Mr Lingam's estate when she had the capacity to do so. Now that she was clothed with that capacity by being appointed administratrix, she, along with her daughter, was bound to carry out the promise.

[13] The appellants' other point was that the order for specific performance should have contained a requirement that the permission of the court be obtained under s. 60(4) of the Probate and Administration Act 1959 for the transfer of the property to

A the plaintiff. That section provides, *inter alia*, that an administrator may not, without the previous permission of the court, transfer any immovable property for the time being vested in him. We were of the view that s. 60(4) does not apply to a case, as this case was, where the transfer would be carried out on the order
B of the court itself. It would have been absurd for the court to order the appellants to effect a transfer of the property and at the same time to order them not to do so before obtaining the permission of the court. In any case the point was not of a nature that would strike at the validity of the finding of a concluded or
C binding contract or of the validity of the orders for specific performance made in consequence of the finding, because, according to s. 60(6) the consequence of contravention of s. 60(4) is on the transfer, and that, too, only to render it voidable at the instance of any other person interested in the property.

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[14] As the appellants failed on both points, their appeal was dismissed with costs, the orders of the High Court were affirmed, and the deposit was ordered to be paid to the respondent to account of taxed costs to be paid out of the estate of Ayaduray
E Sugirtha Lingam (deceased).

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